

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

RICHARD CARMICHAEL, ) CASE NO. C06-0160-JLR  
Petitioner, )  
v. ) ORDER OF DISMISSAL  
STATE OF WASHINGTON, et al., )  
Respondents. )

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Petitioner is a prisoner at the Ely State Prison in Ely, Nevada.<sup>1</sup> He has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner identifies his 1987 Snohomish Superior Court convictions on charges of first degree kidnaping and escape as the convictions under attack in the instant federal habeas action. However, petitioner asserts in his petition, and in his supporting memorandum, that he is not seeking to challenge his convictions. Rather, petitioner asserts, he is seeking to challenge Washington State statute of limitations and speedy trial provisions as they are applied to Washington prisoners who are housed outside the State pursuant to the Western Interstate Corrections Compact, RCW 72.70.010, or the Interstate

<sup>1</sup> Petitioner indicates in his petition that he is currently a “Compact Boarder” in the State of Nevada.

01 Corrections Compact, RCW 72.74.020.

02 Despite petitioner's assertion that he is not seeking to challenge his 1987 Snohomish  
03 County Superior Court convictions in these proceedings, there is no other reasonable way to  
04 construe the instant petition. If petitioner were to prevail on the claims raised in the instant  
05 petition, it would undermine the validity of the Snohomish County judgment and sentence  
06 pursuant to which he is currently incarcerated. The Ninth Circuit has held that 28 U.S.C. § 2254  
07 is the *exclusive* avenue for a state court prisoner to challenge the constitutionality of his  
08 detention. *See White v. Lambert*, 370 F.3d 1002, 1009 (9th Cir. 2004). Therefore, petitioner's  
09 § 2241 petition is properly construed as one brought pursuant to § 2254.

10 A review of this court's records reveals that this is the second federal habeas petition filed  
11 by petitioner in recent months challenging the same Snohomish County convictions. *See*  
12 *Carmichael v. Washington*, Case No. C05-2076-RSM-MAT. Petitioner filed both petitions under  
13 § 2241. An Order was recently issued in Case No. C05-2076-RSM-MAT construing the petition  
14 filed therein as one filed pursuant to § 2254, and granting petitioner leave to amend the petition  
15 to name a proper respondent.

16 Given that petitioner currently has a § 2254 action proceeding in this Court with respect  
17 to his 1987 Snohomish County convictions, the instant action is duplicative. Allowing plaintiff  
18 to proceed with both actions at the same time would be inefficient and would violate the limit  
19 of one habeas petition per conviction imposed by Congress. *See* 28 U.S.C. § 2244. If petitioner  
20 wishes to pursue the claims set forth in the instant habeas petition, he may do so by simply  
21 amending his petition in his other cause number, C05-2076-RSM-MAT.

22 Accordingly, the instant habeas action is DISMISSED. The Clerk is directed to send a  
copy of this Order to petitioner and to the Honorable Mary Alice Theiler.

ORDER OF DISMISSAL

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01 DATED this 27th day of February, 2006.

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03   
04 JAMES L. ROBART  
05 United States District Judge

06 Recommended for Entry this  
07 27th day of February, 2006.

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s/ Mary Alice Theiler  
United States Magistrate Judge